

Remarks

The Office requires restriction to one of the following groups of inventions under 35 U.S.C. § 121:

Group I: claims 1-27, drawn to a method, classified in class 438, subclass 242; and

Group II: claims 28-31, drawn to a device, classified in class 257, subclass 301.

The Office argues that Groups I and II are distinct because the process as claimed can be used to make another and materially different product, i.e., a product that does not include a nitride-containing layer on a portion of the substrate upper surface.

Applicant elects, with traverse, to prosecute the invention of Group I, claims 1-27. Applicant does NOT traverse the Office's classification of the groups of inventions as distinct, merely the Office's reasoning because the Office has not satisfied the criteria for establishing a proper restriction requirement.

The Office's proposed "another and materially different product" is one not containing "a nitride-containing layer on a portion of the substrate upper surface." However, claims 28 are not limited to a nitride-containing layer. These claims recite an isolation cap comprising a "non-organic dielectric material." Thus, even if the Office is correct and the process as claimed can be used to make a product not containing a nitride-containing layer, such a product is not "another and materially different" product than that recited in the claims of Group II.

For these reasons, the Office has not established a proper restriction requirement between the claims of Groups I and II.

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Conclusion

For the above reasons, Applicant respectfully requests the Office to withdraw the restriction requirement and examine the pending claims.

If there is any fee due in connection with the filing of this Response, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 18-0013\40013-0003.

Respectfully Submitted,

By _____


Kenneth E. Horton
Reg. No. 39,481

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